

Alexandria Gazette

PETITION OF ALEXANDRIA FOR ADDITIONAL TERRITORY IS DENIED AND ANNEXATION SUIT IS DISMISSED

Judge Gordon Renders Decision at Alexandria County
Court House This Morning, in Favor of Counties
And Against Alexandria City.

VERDICT A COMPLETE SURPRISE.

Declares City Does Not Need Any Additional Territory and Refers to
Small Increase in Population. Case May be Taken to Supreme Court of
Appeals by Alexandria.

In a sweeping decision rendered this morning at Alexandria court house, Judge Bennett T. Gordon of Nelson county, named by Governor Mann to decide the suit of Alexandria city for additional territory dismissed the petition and in consequence Alexandria will be unable to extend its boundaries. Alexandria may take the case to the Supreme Court.

The decision of Judge Gordon came as a complete surprise not only to the attorneys for the city but of those of the counties, as well, who had confidently expected that, in the least, Alexandria would secure some additional territory.

Judge Gordon read his decision which was all the way through a defense of his action in denying the city's request. A careful reading of the decision by those who are familiar with the case makes it seem impossible that he could have arrived at some of the deductions which he has made.

Boiled down Judge Gordon's reasons for refusing the petition are based on four grounds as follows: 1st The population of Alexandria city has not grown sufficiently during the past 30 years to warrant further territory. 2nd, That the city is not in a congested condition as claimed but that there is plenty of room within the present limits for future development. 3rd, That the financial condition does not warrant further obligations and fourth that the health of Alexandria is so good that there seems to be but little danger of an epidemic due to the lack of sanitary provisions in the suburbs.

Judge Gordon's decision was as follows:

This proceeding pending in the Circuit Court of Alexandria County under Virginia Code S. 1014a has for its object the annexation to the City of certain portions of the counties named as defined in the ordinance passed by the Council of the said City. See also Acts of Assembly 1304 p. 144.

Section 1 of the Acts contemplates first action on the part of a city or town for the annexation of territory the necessity for or the expediency of, which together with the terms and conditions upon which it is desired to annex the same, as well as the provisions made for its future management and improvement, are required to be set forth in ordinance, and second action on the part of the residents of outlying adjacent territory to be annexed to a city or town.

It would seem to be clear inasmuch as notice is required to be given to the movement in either case, that the rights and material interest of both the cities and counties are to be considered and that annexation would be ordered only when the requirements of the statute have been complied with, and the evidence introduced shows the necessity for or the expediency of annexation, that the terms proposed are reasonable and fair, and the provisions for future management just. Those in favor of annexation and those opposed to it, each have rights that should be considered and respected. See Henrico county vs. Richmond 106 Va., at p. 295 & 299.

Therefore it would seem that the rule formerly obtaining as illustrated in the case of Wade vs. the City of Richmond 18 Gratt whereby adjacent territory could, by act of Assembly, be lawfully taken into the city limits, without respect to the rights of the residents of the territory so attached, must be considered as abrogated.

The present procedure for annexing the outlying territory to a city or town being purely statutory we must look to our statutes as interpreted by the Supreme Court of Appeals for guidance in this important matter (Henrico vs. Richmond 106 Va., 282.) "Nearly if not all of the questions

to be determined under the provisions of this act are questions of fact. The powers so much involved agains tin the court to determine necessity for or expediency of annexation is controlled by the existence of facts and circumstances justifying action the necessity for or expediency of enlargement is determined by the health of the community, its size, its crowded condition, its past growth and the need, in the reasonably future, for development and expansion. These are matters of facts and when they so exist as to satisfy the judicial mind of the necessity for or expediency of annexation then in accordance with the provisions of the act the same must be declared.

In the able arguments, both oral and in writing submitted by the learned counsel for the City of Alexandria, the Court was referred to a number of text writers and decisions of the highest courts in other jurisdictions which have been carefully considered so far as acres has been had to them. They seem in the main to be based on local statutes although there are certain general principles announced to which regard should be had to proceeding of this nature in so far as they do not conflict with our local statutes as construed by our own court of Appeals which in addition to the grounds above enumerated has held that the bounds of the city should be enlarged or diminished as may be proper in view of its financial ability. (Id. 291.)

The record in this case is voluminous. Besides the mass of documentary evidence, upwards of one hundred witnesses were examined before the court, the transcript of whose testimony covering 1322 typewritten pages has been attentively reviewed. The court has also the benefit of a view of the city and of the territory proposed to be annexed, as well as exhaustive arguments of counsel. No effort will be made to analyze the evidence introduced, witness by witness. It would be impossible to do so in the limits of his opinion, nothing further will be assayed than what is conceived to be fair deduction from the evidence as a whole and such comments on particular testimony as may be necessary to which the law as enunciated by the Court of Appeals must be applied.

The City of Alexandria was founded in 1784. Its limits by amended charters have been several times enlarged and once in 1871 diminished to those now existing for reasons of political expediency. It has in the past encountered many and formidable obstacles. Our admiration of the courage of its citizens under adverse conditions is equalled only by gratification; all must feel the degree of which it has attained.

But with respect to three of the elements proper to be considered in this connection, as stated in the case of Henrico vs. Richmond, supra namely the size, the crowded conditions and the past growth of the city the figures introduced in evidence show only a small increase in population for the past 30 or 40 years. In 1870 the population was 13,570, in 1880, 13,659, an increase in a decade of only 89. This may be explained, however, by a change in the diminution of the population was 14,339 an increase of 680 in the then ended decade; in 1900 the population was 14,528, an increase in ten years of only 189; in 1910 15,329 an increase in the last decade of 801. For thirty years 1880-1910, the increase is only 1,670 or an average of 55-2-3 a year. It is earnestly argued that there has been a steady exodus of negroes and undesirable elements and the figures produced show that that population has decreased 925 in the two decades from

1890 to 1910. But whether the negro population has left the city in large or small numbers and their places been supplied by an influx of whites the figures cited fail to show that there is at present such a congestion of population as compared with former times when, for aught that appears to the contrary, the present limits were deemed adequate as to render an enlargement of the city territory necessary to its accommodation.

There is evidence tending to show that the city is compactly built in the center as is the case with other of the older towns, that there is no great number of desirable building sites for handsome or fashionable residences appears also to be true. But it is likewise true that there is room for manufacturing plants and also for dwellings of moderate size, suitable for the working class which is most needed for the upbuilding of a town; and it is in evidence that within the city limits there is activity in building and that it is just commencing (Lunt, page 529.)

The testimony of Mr. Dunn, the City Engineer, is to the effect that 30 per cent of the present limits is not built up, and according to Mr. Harrie White there are 460 vacant parcels of land in Alexandria City, the major part of which are available for dwellings for the poor class, laborers and colored people. He also testifies that from one-fourth to one-third of the entire area is not built on. At least three witnesses, familiar with the surrounding say that the putting down of proper streets and other improvements enhance the value of property and bring in a better class of citizens. (Elliot, page 724, Brockett, page 824. King, page 1213.)

It cannot, in view of the evidence, be claimed that all of the vacant land is suitable for building upon, railroad tracks in parts of the city, natural drawbacks, such as low and swampy land, render certain sections unavailable for such use; but it would seem in the light of past experience that if the city authorities carry on the good works so successfully prosecuted thus far, improving and modernizing the streets and extending its sewerage system, much of the land neglected or abandoned in the past will become valuable and suited to residential or other purposes.

Coming now to consider the financial ability of the city to deal successfully with the proposition we are confronted with the fact that it has a bonded debt of \$760,000.00, to provide for, as well as its annual expenditures for ordinary purposes. The street and sewer work in progress cost \$25,300 or \$30,000. The gross receipts for last year were \$178,850, including a temporary loan of \$25,000, excluding the loan \$153,500 and the appropriations \$145,715, according to the City Auditor, Mr. Price; while according to Mr. H. K. Field the estimated receipts for 1912 and 13 are \$152,000, against which there are appropriations of \$148,000 including a \$25,000 loan, a fixed yearly expense of the city government being \$122,000 or \$123,000.

In addition to the foregoing figures it appears by the testimony of Mr. Julian Y. Williams a member of the Council (page 950) that there are pending contemplated street improvements which roughly estimated will aggregate \$100,000 which will necessarily take up all the revenue will aggregate \$100,000 which will near future a high school building will be built at a cost according to Dr. Smith says that an appropriation of that sum has been promised by the Council. It is estimated that the cost to the city of the contemplated annexation will be in the neighborhood of \$50,000 outside of the expense incident to the temporary improvements of Hooft's Run for sewerage purposes. If this expense be added and such improvement can be made at one-fourth of what Mr. Dunn, the City Engineer, estimates of what will be the cost of a covered sewer to wit, \$100,000, we will have to add \$45,000 to the indebtedness of the city, in all \$235,000 (outside of the bonded debt of \$760,000 while the annual gross receipts are as have been estimated either \$152,000 or \$153,000.

This will necessitate an increase in the rate of taxation, to which, according to the testimony the people will not submit. In case of annexation the city would be bound to improve the new territory covering an area as

large as the present boundaries, applying thereto, it is true, for the period of five years the revenues derived therefrom. The almost inevitable result would be to hinder and retard indefinitely the work of betterment now in progress. This is the opinion of a number of gentlemen, residents of the city, and it seems to me to be well founded. And in view of the financial inability of the city, as disclosed by evidence, I cannot say that the proposed annexation is expedient notwithstanding the borrowing capacity of the city.

As to the health of the city, it is testified by both Drs. Smith and Gorman that the sanitary condition is good, equal to if not better than any city in the State, and the death rate is low. It is true, fears are expressed for the future as to the unsanitary condition of Hooft's Run which drains part of the territory to be annexed. Dr. Smith expressing the opinion that as the outlying villages increase in population the sewerage will have to be disposed of, but he admits that the present condition will not be improved unless the city is compelled to put in proper sewers and we have already seen the estimated costs of such sewerage system for Hooft's Run.

As a matter of fact there has been no epidemic or sickness (caused by this stream in the past, and we may safely judge the future by the past. Nor is there any evidence before the court to show in the future these outlying villages will have so increased in population as to bring about a condition involving danger to the health of the city. It would seem that at the present time, if there be danger from the pollution of the stream the city has ample remedy either at law or in equity by injunction. (30 A. E. N. law page 378 et seq.)

The need of the city in the reasonably near future for expansion and development has been herein before incidentally considered. The figures cited speak for themselves. It may not, however, be improper to add that even if the total population, 1,323, of the territory proposed to be annexed, formerly resided in Alexandria, this would not of itself suggest such a condition as would make annexation necessary.

But the evidence introduced by the city (see Harrie White, page 197 and following) shows that in that part of Alexandria county, proposed to be annexed, there are 722 people, white and colored, and 165 heads of families of whom 89 formerly lived in Alexandria City; and that in part of Fairfax proposed to be taken in there are 601 persons and 129 heads of families, of whom 64 were formerly Alexandrians, all being so counted if they ever resided in the city in any past time, 25 or 50 years ago; so it will be seen that of the 294 heads of families residing in the territory 153 were former residents of the city and 141 are from elsewhere. And it is in evidence that at least some former residents of the city moved out because of their preference for suburban over urban homes.

The point was made in argument that the Union Railroad station and freight depot now without should be taken into the corporation and at first I was inclined to adopt this view. In a Kentucky town where it was shown that the only depot near municipality was located in territory sought to be annexed that the inhabitants were dependent on this depot for shipping their freight, passenger travel, and mail, that there were no sidewalks from the boundary to the depot, that one was necessary and that failure to annex would retard the prosperity of the municipality. It was held proper to annex.

In this case the street and the approaches to the station are well paved the cost of the same without the city having been defrayed by private subscription and the county authorities so that what would seem to have been the controlling reasons to the case referred to it wanting here.

As to the large area proposed to be annexed, about twice that of its present corporation bounds and embracing not only the villages of Rosemont, Braddock Heights and so forth, but also some 90 acres of land suited to grazing or agricultural purposes as well as a dairy farm, it is deemed unnecessary, therefore, further than to say that it does not seem to me that this vacant land is in the rule laid down in the case of Vestal vs. Little Rock 54 Ark. 321, 11 L. R. A. 778. Inasmuch as the evidence fails to establish such a state of facts as would justify the court in transferring such property as this, is shown to be, and imposing upon it or its owners the burden of municipal taxation.

It is a pregnant circumstance that practically all of the residents of this

outlying territory, as well as a number in the city, itself opposed annexation. The first named, because they derived from it no benefits that they do not enjoy in the way of lights, water, police protection, schools, roadways, etc., but, on the contrary, they apprehend serious depreciation in the value of their property by reason of increased taxation and the possible opening of saloons; and the second named, because of the belief that the city is now making progress in the matter of streets, sewers, etc., which may be arrested by assumption of the burden incident to the proposed enlargement of the city bounds.

While the mere wishes of the citizens in adjacent territory are not to be allowed to control (for it is not difficult to conceive cases where it would be entirely equitable to acquire those who enjoy municipal benefits to share its burdens. Yet in his case the evidence is sufficient in my judgment to sustain the reasonableness of the objections urged.

Other questions of interest suggested by the evidence was referred to in the arguments of counsel but in the view taken need not be passed upon.

Upon the whole case, having a due regard to the rights of those in favor of the extension and those opposed to it, I am of the opinion that the evidence fails to show the necessity for or expediency of annexation at this time and that, therefore the petition must be dismissed.

HISTORY OF THE CASE.

The question of securing additional territory for Alexandria city has been more or less discussed for the past twenty five years. As is well known the present boundaries of the city and very contracted, the entire area of the city being one square mile. Practically the entire city is built up and there are no desirable vacant lots upon which new houses can be erected.

In 1905 the railways moved their passenger station outside of the city limits and erected the new Union station in Fairfax county.

Last year the freight station of the Washington Southern Railway was also moved beyond the limits of the city.

Five years ago the development of the suburbs outside of the city limits was commenced and an exodus of many of the wealthy citizens of Alexandria followed.

The loss of population and revenue caused by the building up of the suburbs and the cost to the city of providing police and fire protection to the surrounding counties without receiving any compensation, brought about a revival of the demand for the annexation of additional territory and in the latter part of 1911, the question came before the City Council of Alexandria.

A bitter fight of several months standing followed as several members of that body opposed the annexation measure.

The ordinance was finally passed by a unanimous vote in the Board of Aldermen and by a vote of 13 to 3 in the Common Council, the 3 members who voted against the bill being Councilmen Brockett, Williams and Leadbeater.

Court proceedings immediately followed the action of the city fathers. Commonwealth's Attorney Samuel G. Brent and John M. Johnson, were engaged to assist Corporation Attorney Samuel P. Fisher in conducting the case.

Alexandria county secured Ex-Governor Andrew J. Montague and his brother, R. Lynch Montague, to assist Crandell Mackey, commonwealth's attorney of hat county and the legal firm of Moore, Barbour, Keith and McCandlish were secured to assist C. Vernon Ford, commonwealth's attorney of Fairfax county. Governor Mann named Judge Bennett T. Gordon, of Nelson county, to conduct the hearing and on May 6th 1912, after the first day's contest Judge Gordon dismissed the proceedings on the ground that the authorities of the two counties had not received proper notice of the commencement of the suit.

In June the proceedings were resumed but not until September 17th did the real hearing commence.

The trial lasted for more than 2 weeks and 108 witnesses testified for and against Alexandria city. The hearing was frequently interrupted by adjournments and on November 13th and 14th, the case was argued.

Judge Gordon took the matter under advisement and it was not until today that he rendered his decision.

Steamed Oysters at Rammel's Cafe.

25,000 WORKERS

RECEIVED TO JAMES

One Division of Army of
Strikers Amicably Set-
tle Trouble.

WAGES INCREASED.

Sympathizers With Those Who Walked Out Clash With Police—Heads of Many are Clubbed.

New York, Jan. 18.—One division of the great garment workers strike was settled amicably today when the manufacturers and employees committees of the Waists and Dressmakers Trades came to an agreement under which 25,000 workers will return to the shops Monday.

The strikers were granted their demands for general increase in wages on a sliding scale, better hours and fire protection. The manufacturers in the association that agreed to these terms control about 75 per cent of the waist and dress making shops.

As an aftermath of the settlement of the waist and dressmakers strike it was learned today that an agreement between the manufacturers in the association and union leaders had been reached three weeks ago to test the strength of the union by calling out the workers.

Outbreaks of violence in which strikers and their sympathizers clashed with the police and half a dozen strike pickets were arrested, were early developments in the progress of the garment workers struggle, today.

In one disturbance in front of the factory of Albert Benjamin in La Fayette street, several hundred strikers engaged in a near battle with the police reserves, during which heads were clubbed right and left and a number of persons badly cut and bruised.

A group of girl pickets surrounded a laundry wagon loaded with mattresses for the strike-breakers in Jacob Greenberg's shop to sleep on, pulled the mattresses to the street and attacked the driver. Three girls and one man was arrested.

TURKEY IN EUROPE ABOUT TO PASS AWAY

Rejection of Note of Powers
Puts No Restraint Upon
The Allies.

TO ATTACK CAPITAL.

European Countries Have Advised
Porte to Concede Adrianople and
The Islands of Aegean Sea.

London, Jan. 18.—The peace envoys of the Balkan states today agreed that the joint note of the Great Powers handed to the Porte did not put any restraint upon the allies, and they declared that Turkey's rejection of the advice of the Powers would mean the utter annihilation of Turkey in Europe.

The Balkan delegates said they could interpret no part of the note to be in opposition to the capture by the allies of Constantinople and they declared that the taking of the Ottoman capital would be the first thing under taken, should the war be resumed.

At the same time, the Balkan plenipotentiaries professed to be confident that war would not be resumed.

The note of the Powers, jointly presented to the Turkish government by the ambassadors at Constantinople, advised the Porte to submit to the terms offered by the allies, including the cession of Adrianople and the Aegean Islands. Turkey was told that if she precipitated fresh hostilities, she would receive no financial aid from any of the powers and would lay herself liable to assaults of Asiatic Turkey, which up to now the allies have not attacked.

HOUSES FLOATING DOWN OHIO RIVER

Fatalities are Feared as Result of High Wind Last Night.

VILLAGES SWEEPED OFF.

Inhabitants Flee to Hills—Suffering For Want of Food—Scores of Cats Rescue dby the Mayor.

Evansville, Ind., Jan. 18.—Houses floating down the Ohio river, Enterprise, Ind., with a population of 290, abandoned and probably swept away; Madisonville, Webster and Tompkins, villages on the neighboring towns, marked the flood situation here today. That the crest has been reached was indicated by the river stage stationery now 24 hours at 46.5 feet.

The worst will not be over for several days, however, as the effect of almost a week's steady rain will keep the waters high for some time.

Fatalities it was feared, may have resulted from last night's high wind, but owing to the absence of communication no confirmation could be obtained.

The inhabitants fled to the hills after their homes had been destroyed.

Evansville, Owensboro, and Baskett K., besides several smaller villages in Illinois, have made frantic attempts to get food and provisions. Evansville's relief arrangements are taxed to the utmost and state officials are on the ground today to offer aid. The emergency bakeries, and groceries are giving to the limit of their resources on the city's promise to pay later.

A score of cats were rescued by Mayor Heilmann himself.

POINCARÉ RESIGNS AS FRENCH PREMIER

M. Briand, Minister of Justice, Will, it is Said, Succeed Him.

VICTORY OF PEOPLE.

Frenzied Enthusiasm in Paris Last Night—Politicians Averse to Newly Elected President.

Paris, Jan. 18.—M. Raymond Poincaré, president-elect of France, today tendered his resignation as premier, to President Armand Fallières, whom Poincaré will succeed on February 18.

It was thought probable that M. Briand, minister of justice, would be designated to act as premier until President Fallières's term expired, and that all of the Poincaré cabinet would be retained for the month's interim, with M. Burgeois as minister of foreign affairs.

With the Balkan situation unsettled, the loss of Poincaré as the practical head of the government, was felt to be rather a blow, but it was believed that the president-elect would keep in touch with the situation and would freely offer his advice to the cabinet. Poincaré gave out a statement today saying that he would go into retirement and take a thorough rest between now and the day of his inauguration.

There was a hang-over today of the frenzied enthusiasm that prevailed throughout Paris last night. Crowds were still in the streets and the restaurants and cafes were doing a thriving business.

The election of Poincaré to the ninth presidency of the third republic is universally regarded as a telling victory of the people over the politicians.

That the politicians did not want Poincaré was evident from the result of the ballots taken in the republican caucus, but they were unable to stem the tide of the popular demand for the premier.